



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

Proposed Partial Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed partial consent decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (“CAA” or the “Act”), notice is hereby given of a proposed partial consent decree to address a lawsuit filed by the Sierra Club in the United States District Court for the District of Columbia: Sierra Club v. EPA, Civil Action No. 10-cv-1541 (CKK) (D.D.C.) (filed Sept. 14, 2010). Plaintiff filed a lawsuit alleging that Gina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency (“EPA”), failed to perform duties mandated by the CAA to: (1) promulgate a federal implementation plan (“FIP”) for the State of Texas for the 1997 fine particulate matter (“PM_{2.5}”) and ozone national ambient air quality standards (“NAAQS”); (2) promulgate a FIP for the State of Texas for the 1997 ozone NAAQS; and (3) take final approval/ disapproval action on the state implementation plan (“SIP”) that Texas submitted for implementation of the 1997 PM_{2.5} NAAQS. The proposed partial consent decree would establish deadlines for EPA to take certain specified actions.

DATES: Written comments on the proposed partial consent decree must be received by [insert date 30 days after publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID number OGC-2015-0544, online at www.regulations.gov (EPA’s preferred method); by e-mail to oei.docket@epa.gov; by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200

Pennsylvania Ave., NW., Washington, DC 20460-0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Stephanie L. Hogan, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone: (202) 564-3244; fax number: (202) 564-5603; email address: hogan.stephanie@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Additional information about the proposed partial consent decree.

The proposed partial consent decree would partially resolve a lawsuit filed by the Sierra Club seeking to compel the Administrator to take actions under CAA section 110(c)(1) and (k)(2). The Plaintiff's lawsuit alleged that EPA has a mandatory duty to: (1) promulgate a FIP for the State of Texas that meets the requirements of CAA section 110(a)(2)(D)(i) for the 1997 PM2.5 and ozone NAAQS; (2) promulgate a FIP for the State of Texas that meets the requirements of CAA Section 110(a)(2) for the 1997 ozone NAAQS; and (3) take final approval/disapproval action pursuant to CAA section 110(k)(3) on the SIP that Texas submitted for implementation of the 1997 PM2.5 NAAQS. The proposed partial consent decree would resolve the Plaintiff's claim regarding EPA's duty to promulgate a FIP that meets the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 1997 ozone NAAQS for Texas. Under the terms of the proposed partial consent decree, EPA must take proposed action no later

than September 22, 2015, and final action no later than February 22, 2016, with respect to this claim. See the proposed partial consent decree for the specific details.

The proposed partial consent decree does not resolve Plaintiff's claim with respect to the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 1997 PM_{2.5} NAAQS for Texas. The court entered a partial consent decree with respect to the other claims at issue in the case on November 28, 2011.

On July 28, 2015, the Court of Appeals for the District of Columbia Circuit (D.C. Circuit) issued its opinion in EME Homer City Generation, L.P. v. EPA, slip op., No. 11-1302, regarding the Cross-State Air Pollution Rule (CSAPR), 76 Fed. Reg. 48,208 (Aug. 8, 2011). In CSAPR, EPA determined that the FIP promulgated in that rulemaking to address CAA section 110(a)(2)(D)(i)(I) as to Texas with respect to the 1997 ozone NAAQS may not be sufficient to address the state's statutory obligation under that provision. 76 Fed. Reg. at 48,210 n.3. In EME Homer City, however, the court determined, among other things, that the Texas FIP required more emission reductions than necessary to address that state's obligation pursuant to CAA section 110(a)(2)(D)(i)(I). Slip op. at 19. The EPA is still evaluating the impact of that decision on the claims raised in the present lawsuit, Sierra Club v. EPA. However, because the proposed partial consent decree has been lodged with the court, the EPA is issuing the notice required by CAA section 113(g) within the timeframe required by the proposed partial consent decree and requests comment as to whether the court's decision in EME Homer City should in any way affect whether EPA finalizes the partial consent decree or its terms.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed partial consent decree from

persons who are not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed partial consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this proposed partial consent decree should be withdrawn, the terms of the partial consent decree will be affirmed.

II. Additional information about commenting on the proposed partial consent decree.

A. How Can I Get A Copy Of the Proposed Partial Consent Decree?

The official public docket for this action (identified by OGC-2015-0544) contains a copy of the proposed partial consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

An electronic version of the public docket is available through www.regulations.gov. You may use www.regulations.gov to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search”.

It is important to note that EPA’s policy is that public comments, whether submitted

electronically or in paper, will be made available for public viewing online at www.regulations.gov without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact

you for clarification, EPA may not be able to consider your comment.

Use of the www.regulations.gov website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through www.regulations.gov, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: July 31, 2015.

Lorie J. Schmidt,
Associate General Counsel.

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